

# **TAB 5**

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

C.A. NO. 04-12068JLT

**COPY**

DANIEL A. FERRIE,

Plaintiff

vs.

K MART CORPORATION,

Defendant

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DEPOSITION OF DAVID B. HUGHES, taken  
on behalf of the Plaintiff, before Maryellen  
Coughlin, Registered Professional Reporter and  
Notary Public in and for the Commonwealth of  
Massachusetts held at Law Office of Paul F.  
Wood, P.C., 45 Bowdoin Street, Boston,  
Massachusetts, on May 13, 2005, commencing at  
9:00 a.m.

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GENERAL & TECHNICAL COURT REPORTING  
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1 A. Yes.

2 Q. And are you prepared to testify on  
3 behalf of K Mart as to the 27 listed subject  
4 areas?

5 A. Yes.

6 Q. Okay. And you understand that you  
7 are testifying not solely as to your own personal  
8 knowledge but as to Kmart's knowledge concerning  
9 these areas?

10 A. Yes.

11 Q. Okay, great. We'll get right to  
12 it. Why was Mr. Ferrie terminated from his  
13 employment from K Mart?

14 A. Manipulation of Smart plans.

15 Q. Okay. Were there any other  
16 reasons?

17 A. No.

18 Q. Okay.

19 MR. ROSIN: I don't know if you  
20 want to identify: We're now doing subject one;  
21 we are now doing subject two. That's up to you.

22 MR. WOOD: Off the record.

23 (Discussion off the record.)

24 Q. Why don't we mark this as

1 Q. When was the decision made to  
2 terminate Mr. Ferrie, to the best of your  
3 recollection, or the best of K Mart's  
4 recollection?

5 MR. ROSIN: I will note for the  
6 record that's not an area of questioning, but I  
7 will allow that question.

8 Q. Fine.

9 A. Mr. Ferrie was -- the decision to  
10 separate Mr. Ferrie was done after an  
11 investigation was completed by Donna Mastroeni  
12 and John Swank, and statements were obtained  
13 after Mr. Ferrie's return to work and was in the  
14 store. A statement was obtained from Mr. Ferrie  
15 on manipulation of the Smart plans. He wrote out  
16 a statement. I could not read the statement or  
17 understand it, so he was asked to type a  
18 statement. I then reviewed the typed statement.

19 I sat down with Mary Jo Duffy, we  
20 re-reviewed all of the statements that were  
21 provided by Mr. Swank on the investigation done  
22 on Mr. Ferrie, we read Mr. Ferrie's statement,  
23 and me and Mary Jo Duffy made the decision to  
24 separate Mr. Ferrie for manipulation of Smart

1 plans.

2 Q. So your testimony is, the decision  
3 to terminate Mr. Ferrie was made on or subsequent  
4 to March 1st, 2004?

5 A. The decision was made after I  
6 obtained a statement from Mr. Ferrie, which he  
7 wrote.

8 Q. And when did you obtain that  
9 statement?

10 A. I'm sure the statement is here. It  
11 would have been dated on the statement when I  
12 received it, the day he wrote it. There should  
13 have been a statement.

14 Q. Did you or Ms. Duffy, the  
15 decision-makers, speak to Mr. Ferrie prior to the  
16 decision to terminate him?

17 A. Did we speak to Mr. Ferrie  
18 personally, myself or Mary Jo Duffy?

19 Q. Yes.

20 A. No.

21 Q. How long a period of time expired  
22 between your review of Mr. Ferrie's statement and  
23 your decision to terminate him?

24 A. It's been a while since it

1 happened, but it was -- we obtained a statement,  
2 and I believe, to the best of my recognition,  
3 that after we received his written statement we  
4 read it. And after that, based on the previous  
5 investigation that was sent to me from Donna  
6 Mastroeni, John Swank, and after obtaining a  
7 statement, we then after that decided to  
8 terminate Mr. Ferrie's employment.

9 Q. Okay.

10 A. And it was that day.

11 Q. Who did you speak to in making the  
12 decision to terminate Mr. Ferrie?

13 A. Everyone that I spoke to?

14 Q. Yes.

15 A. Well, previously I had spoke to  
16 Mr. Swank on the investigation. I had spoke to  
17 Mary Jo Duffy, the regional vice president, on  
18 the investigation. I spoke to Mike Haud, who was  
19 the new district manager at the time when we did  
20 separate him, because Mr. Swank had moved on to  
21 the New Jersey market. So I spoke to Michael  
22 Haud about the investigation and the separation.

23 Q. Okay. Anyone else?

24 A. To the best of my knowledge, that's

1 everyone I spoke to.

2 Q. Okay. To the best of your  
3 knowledge, what did you and Mr. Swank discuss?

4 A. The content of the investigation  
5 that he sent me, with statements from associates  
6 and the audit that was completed by Donna  
7 Mastroeni on Smart plans being purchased.

8 Q. Do you remember anything else about  
9 your discussions with Mr. Swank, or is that it?

10 A. There were other things that were  
11 in the investigation that Mr. Ferrie was doing in  
12 the store, but that wasn't -- me and Mr. Swank  
13 only discussed, when terminating Mr. Ferrie,  
14 Smart plans, but in the audit there was other  
15 things uncovered.

16 Q. And what were your discussions with  
17 Ms. Duffy?

18 A. That the code of conduct in K Mart  
19 is very high. We do not tolerate people that  
20 manipulate or cheat for their benefit. We have a  
21 very high standard when it comes to how a store  
22 manager should conduct themselves as a store  
23 manager, and we felt through this investigation  
24 that Mr. Ferrie did not conduct himself in an

1 appropriate manner, and we decided to separate  
2 him for manipulation of Smart plan sales.

3 Q. Anything else you can recall from  
4 your discussions with Ms. Duffy?

5 A. To the best of my recollection of  
6 our conversation, that's what we discussed.

7 Q. Okay. Same question for Mike Haud,  
8 what did you discuss with him?

9 A. Mike Haud was a new district  
10 manager at the location, and Mike Haud was not  
11 part of the original investigation. I discussed  
12 with Mike Haud what had previously happened with  
13 Mr. Ferrie in the investigation done by Donna  
14 Mastroeni and Mr. Swank, and asked Mr. Hod to  
15 obtain a statement from Mr. Ferrie on, you know,  
16 his side of the story, on what had happened when  
17 it came to regards to that investigation that was  
18 completed, and to get his explanation on what had  
19 happened.

20 Q. And to the best of your  
21 recollection, when did that discussion take  
22 place?

23 A. In the investigation, there's a  
24 statement that was written by Mr. Ferrie, and



1 answer. I'm just objecting to the form.

2 A. The audit is dated 12/18, and I see  
3 in here that, in Mr. Swank's statement, that it  
4 looks like the investigation started 12/18  
5 because he refers to Dan being out on leave prior  
6 to the investigation on 12/17.

7 Q. Okay.

8 A. So I infer or believe that the  
9 investigation started December 18th.

10 Q. Great. Thank you. If you look to  
11 the first page of Exhibit 5. No, the very first  
12 page. I'm sorry.

13 A. Okay.

14 Q. It appears to be a fax cover sheet  
15 addressed to you with the date of December 21st,  
16 2003; is that correct?

17 A. Yup.

18 Q. Okay. Would it be your  
19 understanding that the investigation had  
20 concluded and a report was being sent to you? Is  
21 that what this document is?

22 MR. ROSIN: Objection.

23 Q. You can still answer.

24 A. Oh. That it was concluded, no.

1           Q.       Okay. What was the purpose of  
2       sending this facsimile to you?

3           A.       These were statements of associates  
4       alleging Smart plan manipulation by Mr. Ferrie,  
5       and also an audit by Donna Mastroeni and a  
6       synopsis prepared by John Swank that was sent to  
7       me. It was, again, statements, an audit and a  
8       synopsis.

9           Q.       And what was the purpose of sending  
10      those documents to you?

11          A.       As the regional human resource  
12      director, it would be sent to me. Any  
13      investigation on a store manager, or an assistant  
14      manager, or any associate, when it comes in  
15      regards to manipulation. So it was sent to me.

16          Q.       And upon receiving Exhibit 5, what  
17      did you do?

18          A.       I read it.

19          Q.       And then what did you do?  
20      Everything you did, sir, after receiving  
21      Exhibit 5?

22          A.       I read it, then I reviewed it with  
23      Mary Jo Duffy. And then the store manager was  
24      not available to discuss the findings, so it was

1 kept by me until Mr. Ferrie's return.

2 Q. And why wasn't Mr. Ferrie  
3 available?

4 A. He was not at work due to a  
5 workers' compensation injury.

6 Q. Could you have called him on the  
7 phone?

8 A. No. He was out on workers'  
9 compensation. There was no need to call anyone  
10 on a workers' compensation. We would wait until  
11 he returned.

12 Q. Okay. Please tell me, sir, all  
13 communications that K Mart had with third  
14 parties. In other words, non-K Mart employees --  
15 not including K Mart's attorneys -- concerning  
16 these allegations against Mr. Ferrie?

17 MR. ROSIN: Third parties.

18 Q. Third parties. Not your, K Mart's  
19 attorneys and not employees of K Mart.

20 A. On Smart plan manipulation?

21 Q. On the allegations against  
22 Mr. Ferrie which would include the Smart plan  
23 manipulations, the alleged Smart plan  
24 manipulations.

**TAB 6**

TO: ALL STORE MANAGEMENT TEAMS

FROM: STORE OPERATIONS ADMINISTRATION (pg)

STORE USE	
Mgr. Initials	_____
Date Reviewed	_____

**RE: Bulletin SER #5**

**"Smart Plan Extended Warranty"**

**Expectation** The *Smart Plan* is offered to provide our customers with a lost cost option of purchasing an extended protection plan on selected merchandise throughout the store. It is the responsibility of the Store Manager/Director to ensure that all associates understand that the *Smart Plan* must be offered to every customer properly every time an eligible item is purchased.

**Purpose of the Smart Plan Program** The *Smart Plan*, when implemented properly, will provide the following benefits to Kmart:

- **Improved Customer Loyalty**  
Our plan provides superior service to the customer after the store return policy has expired.
- **Improved Sales and Profit**  
The *Smart Plan* generates a margin of 62.5% and offers the opportunity to dramatically reduce your store's miscellaneous expenses. *Smart Plan* income is reported as a credit to expenses on the NPR.
- **Reduce Returns**  
Once sold, the *Smart Plan* has the responsibility to repair or replace the item for the consumer by having them call the 1.800.99 Kmart Customer Service Line. This Customer Service Line is available 24 hours a day, 7 days a week. This will reduce your store's returns.

**Expectations of the Smart Plan Program** It is the responsibility of our Management Team to insure that the company meets and/or exceeds the expectations outlined below.

1. Our minimum expectation is, "To offer the *Smart Plan* to every customer every time properly." Properly means that when the item is prompted by the register, it is presented in a positive manner giving the customer at least one benefit of the program. (See section *Ways to Offer the Smart Plan*).

*Continued on next page*

TOPIC	TAB	PAGE	DATE	DISCARD DATE
Smart Plan Extended Warranty	SER	1 of 12	06/26/01	INDEFINITE

STORE OPERATING POLICIES

## Smart Plan Extended Warranty, Continued

### Expectations of the Smart Plan Program, continued

Continue to follow the expectations below.

2. To achieve the planned conversion rate as established by Kmart. The conversion rate % is calculated by dividing the number of Smart Plans sold by the number of opportunities you had to sell a Smart Plan. The conversion rate % is to be communicated to, and achieved by:
  - Associate
  - Area/Department
  - Store
  - District
  - Region and Company
3. That all associates (new hires, seasonal, and current), have been properly trained and understand the minimum expectation.
4. The Operations Manager is assigned the responsibility for managing the program and achieving the store goals, including:
  - Track and communicate results on a daily basis by using the *End of Day Smart Plan* report and provide guidance on the program to the Assistant, Upfront, and Department Managers for: Cashiers, Jewelry, Electronics, Image Center, Sporting Goods, Lawn and Garden, Layaway, and Service Desk.
  - Post the *End of Day Smart Plan* report so that it is accessible for all associates to see. Require Assistant, Upfront, and Department Managers to know their figures and cover the report with their associates.
  - Create friendly competition by using the End of Day report, among the Assistant, Upfront, and Department Managers.
  - Insure that all management and associates in the store understand the company's minimum expectation of the *Smart Plan* which is to: **Offer the *Smart Plan* to every customer every time properly,** when an eligible product is purchased.
  - Review daily *Smart Plan* results when walking the floor with the Assistant, Upfront, and Department Managers.
  - Follow up with the Human Resource Manager to insure proper training is being done properly.
  - Motivate associates positively and give recognition to those that are performing well.
  - Determine with the Assistant, Upfront, and Department Managers what action is needed to improve the performance in areas that are struggling.
  - Insure adequate *Smart Plan* supplies are in stock.

*Continued on next page*

TOPIC	TAB	PAGE	DATE	DISCARD DATE
Smart Plan Extended Warranty	SER	2 of 12	08/26/01	INDEFINITE

STORE OPERATING POLICIES

## Smart Plan Extended Warranty, Continued

**Commission** The register will prompt the associate when a *Smart Plan* is available. The associate selling the *Smart Plan* to the customer will receive a commission for every *Smart Plan* sold. Each associate will receive a new *Commission Record* from the Upfront Manager or Front End Supervisor each Thursday. In order to receive the commission, each associate is responsible for validating the *Commission Record*. Validations are done on eligible items and warranty sales. Only register validations are acceptable, handwritten entries are not acceptable. The *Commission Records* are to be signed by the associate and turned into the cash office every Wednesday. The *Commission Record* can be reordered through KIN and the Mops code is 00944538-115.

**Smart Plan Programs** The *Smart Plan* Program consists of two plans, the *Replacement Plan* and the *Service Plan*. The products covered run on gas, electricity, and batteries, plus mechanical products like exercise equipment and bicycles. It does not cover firearms or watch batteries.

The *Replacement Plan* replaces the defective product with a new identical product, or the customer is reimbursed for the purchase amount plus tax. Coverage begins on the date of purchase and lasts one year. If a problem occurs within 30 days of purchase, the customer returns the product to Kmart/SuperK. If it is after 30 days, the customer is to call the *Smart Plan Call Center* at 1.800.99Kmart (1.800.995.6278).

The *Service Plan* gives the customer one additional year of coverage after the manufacturer's warranty expires. If an item cannot be repaired, it will be replaced. Additional coverage is also provided. This additional coverage includes power and surge protection, failure due to normal usage, remote control problems, annual head cleaning on VCR's and in-home service on TVs 20" or larger and exercise equipment.

**Offline / Voids** When the registers are "offline", the warranty prompt will not be displayed. Use the UPC's that are printed at the top of the *Smart Plan* form to ring up the warranty plan during offline conditions.

When a void is need to be done it is important to remember that a line void will void the item sold, but a *Smart Plan* needs to have the UPC number of the *Smart Plan* manually entered to complete the void.

*Continued on next page*

TOPIC	TAB	PAGE	DATE	DISCARD DATE
Smart Plan Extended Warranty	SER	3 of 12	06/26/01	INDEFINITE

STORE OPERATING POLICIES

## Smart Plan Extended Warranty, Continued

### Store Manager Duties

The Store Manager is responsible for the following:

1. Has ultimate responsibility for the store's performance.
2. Insure that all management and associates in the store understand the company's minimum expectation of the *Smart Plan* program, which is: ***Offer the Smart Plan to every customer every time properly.***
3. Reviews daily conversion rate % achieved with the Operations Manager to determine variance to goal.
4. Supports the Operation Manager in achieving the program goals.
5. Provides recognition and motivates associates positively when discussing the *Smart Plan* program.
6. Insure the following points are covered during the 10 Minute Huddle meeting:
  - Announce the store's daily figures from the prior day's *End of Day Smart Plan* report.
  - Recognize the top performers from the previous day.
  - Discuss the number of total opportunities for the store and the potential that exists.
  - Discuss the commission potential in terms of missed opportunities and explain what the commission could mean to an associate's average hourly rate (i.e. give yourself a raise).
  - Alert associates to featured ad items that are eligible for the *Smart Plan*.
  - Ask for one of the top performers to tell the group their secret for success.

### Human Resource Manager Duties

The Human Resource Manager is responsible for the following:

1. Cover the minimum expectation during the interview, orientation, and 90 day appraisal process. Insure that all associates understand that ***"Offering the Smart Plan to every customer every time properly"*** is a requirement of the job.
2. Insure that all new and current associates have been properly trained and have successfully passed the test by scoring 100%. All current associates are to be tested using the test at the back of this Golden Rod. (Make additional copies of the test at store level).
3. Cover the ***"Ways to Offer the Smart Plan"*** with each associate.
4. Review the register prompt and show an actual *Smart Plan* contract to the associate. Explain how to use it.
5. Explain the commission record and how to validate and record a *Smart Plan* sale. Explain how to file for the commission, and how the commission is paid to the associate.

*Continued on next page*

TOPIC	TAB	PAGE	DATE	DISCARD DATE
Smart Plan Extended Warranty	SER	4 of 12	06/26/01	INDEFINITE

STORE OPERATING POLICIES



## Smart Plan Extended Warranty, Continued

### Human Resource Manager Duties

Continue to follow the Human Resource Manager responsibilities below.

6. Explain to each associate the potential commission income that can be earned by selling the *Smart Plan*. Each associate will earn \$1.00 for each service plan, \$.50 for the \$4.99 and \$7.99 replacement plans and \$.25 for the \$2.99 replacement plan. Discuss the potential that the associate has to earn extra income and what the income could do for their average hourly rate.
7. Assists the Assistant, Upfront, and Department Managers on a daily basis in identifying associates that need addition training and works with the Assistant/Department Managers to schedule associates for retraining where necessary.
8. Utilize the following tools to conduct training:
  - The Eight Minute Video tape
  - The CBT Module
  - The Smart Plan test
  - Commission Record (Mops # 0-944538-115)
  - Smart Plan Contract

### Smart Plan Testing

#### New Hires and Seasonal Hires

- If a new hire scores less than 100% on the test they must immediately review the training materials and retake the test. If a perfect score is not achieved, review the questions with the associate to determine their understanding of the program before they report to the sales floor.
- Place all test results in the associate's personnel files.
- As the associate reaches their 90 days of employment, review their conversion rate % results to determine if additional training is needed.

#### Current Associates

- All current associates are required to take the *Smart Plan* test within 30 days of the store's receipt of this Golden Rod.
- Place test results in the associate's personnel file.
- If a current associate scores less than 100% on the test they must immediately review the 8-minute video and CBT (Computer Based Training) Module and retake the test. If a perfect score is not achieved, review the questions with the associate to determine their understanding of the program before they report to the sales floor. Insure they understand the program and that they can offer the *Smart Plan* properly to customers.

*Continued on next page*

TOPIC	TAB	PAGE	DATE	DISCARD DATE
Smart Plan Extended Warranty	SER	5 of 12	06/26/01	INDEFINITE

STORE OPERATING POLICIES

## Smart Plan Extended Warranty, Continued

### Assistant Managers' Duties

The Assistant Managers' responsibilities include the following:

1. Achieve the conversion rate % results in their departments.
2. Have knowledge of and communicate conversion rate % goals to the Department Managers and associates.
3. Review daily results with their Department Managers and associates.
4. Demonstrate and insure that all of their Department Managers and associates are trained and that they "Offer the *Smart Plan* to every customer every time properly."
5. Identify associates who need training and insure that it is conducted in a timely manner.
6. Motivate associates and provide positive recognition when discussing the *Smart Plan* program.
7. Insure *Smart Plan* signing materials are in place and that the contract pads are available at all registers.

### Department/Upfront Managers'/Front End Supervisor Duties

The Department/Upfront Managers' and Front End Supervisors' responsibilities include the following:

1. Includes all Assistant Managers' responsibilities.
2. Insures each associate understands each line of the *Smart Plan* register prompt.
3. Insures each associate understands how to validate the commission record and how to receive their commission.
4. Cover the "Ways to Offer the *Smart Plan*" with each associate.

### Associate Duties

The associate's responsibilities include the following:

1. Understand the *Smart Plan* program: Benefits of the plan, how to offer it properly to every customer every time, and how to read each line of the *Smart Plan* register prompt.
2. Required to "Offer the *Smart Plan* to every customer every time" in a positive manner giving at least one benefit of the plan.
3. Review the "Ways to Offer the *Smart Plan*".
4. Responsible to record sales on the commission record and turn it in as required to receive commission.
5. Insure that you have contract pads at your register.

*Continued on next page*

TOPIC	TAB	PAGE	DATE	DISCARD DATE
Smart Plan Extended Warranty	SER	6 of 12	06/26/01	INDEFINITE

STORE OPERATING POLICIES

## Smart Plan Extended Warranty, Continued

### Signing Materials and Supplies

Follow the chart below when it is necessary to order *Smart Plan* signage and supplies.

Mops Code	Description	Store Max Order	Pkg. Qty	Size
0-933560-112	Ticket Pad (English)	2	12/pkg	5" x 3"
0-933561-110	Contract (all stores except FL)	3	10/pkg	5" x 11"
0-933562-118	Channel Sign	1	12/pkg	3" x 10"
0-933564-114	Ticket Pad (Spanish)	2	12/pkg	5" x 3"
0-933565-111	Contract (Spanish-all stores except FL)	6	10/pkg	5" x 11"
0-933565-129	Contract (Spanish-FL stores only)	6	10/pkg	5" x 11"
0-933566-119	Price Service Plan	1	50/pkg	5" x 3"
0-933567-117	Channel Sign (Spanish)	1	24/set	3" x 10"
0-933568-115	Channel Sign/Replacement Service Plan	1	24/set	3" x 5"
0-933569-113	Static Cling (Electronics)	1	12/pkg	6.7" x 6.7"
0-933575-110	Replacement Plan (Spanish)	3	10/pkg	7" x 11"
0-933730-111	Replacement Plan (Spanish)	2	50/pkg	5" x 3"
0-933731-119	Static Cling Triangle SPA	1	12/pkg	
0-933732-117	Contract (FL stores only)	3	10/pkg	5" x 11"
0-936242-114	Smart Plan Hang Tag	2	100/pkg	4" x 7"
0-936612-118	Static Cling Watch	1	6/pkg	5.7" x 5.7"
0-936612-126	Static Cling Watch (Spanish)	1	6/pkg	5.7" x 5.7"
0-936612-134	Static Cling Jewelry	1	6/pkg	5" x 5"
0-936724-111	2 Poster for Breakroom	1	2/set	
0-937827-111	Smart Plan Scoreboard	1	1/each	36" x 24"

### Placing orders on KIN procedures

Follow the procedure below to place an order for *Smart Plan* signage and supplies.

Step	Action
1	On the KIN CRT, from the <i>Application Menu</i> , select option 4, <i>Ordering</i> and press F12.  Result: The <i>Ordering</i> screen displays.
2	Select option 2, <i>Enter Orders, Cancellations</i> and press F12.  Result: The <i>Enter Orders or Cancellations</i> screen displays.

*Continued on next page*

TOPIC	TAB	PAGE	DATE	DISCARD DATE
Smart Plan Extended Warranty	SER	7 of 12	06/26/01	INDEFINITE

STORE OPERATING POLICIES

## Smart Plan Extended Warranty, Continued

Placing  
orders on KIN  
procedures,  
continued

Continue to follow the procedure below.

Step	Action
3	On the <i>Enter Orders or Cancellations</i> screen, select option 1, <i>Regular Order</i> and press F12.  <b>Result:</b> The <i>Regular Order</i> screen displays.
4	On the <i>Regular Order</i> screen, do the following to place an order:  1. Enter the Kmart Code, press ENTER. 2. Enter the quantity needed, press ENTER. 3. Repeat procedures as needed until all Kmart Codes and needed quantities are keyed in. 4. Press F12 to accept order.

Smart Plan  
End of Day  
Report

The *Smart Plan End of Day Report* was developed to accomplish several objectives:

1. Provides a fair and uniform way of judging performance regardless of the number of hours an associate works.
2. Ability to track performance from the store member level up to the Divisional level.
3. Creates awareness at all levels of the organization.
4. Allows for positive recognition at every level.
5. Helps to identify training needs.

*Continued on next page*

TOPIC	TAB	PAGE	DATE	DISCARD DATE
Smart Plan Extended Warranty	SER	8 of 12	06/26/01	INDEFINITE

STORE OPERATING POLICIES

# Smart Plan Extended Warranty, Continued

Smart Plan  
End of Day  
Report,  
continued

Below is an example of the *Smart Plan End of Day Report*.

End of Day Smart Plan Report				
KMSKODL.???		END OF DAY		PAGE
KMSKMLL.???		SMART PLAN SALES REPORT		STORE
4/27/2001 (8:00 PM)		FOR 4/26/2000		TRAY
OPERATOR #1 61				# 1005
				MI
ITEM PURCHASED	PLAN SOLD?	LOCATION#	TRANS#	SMART PLAN SALE
378498661899	Y	7	8135	4.99
443138012899	Y	7	8348	4.99
739802890289	Y	7	8383	4.99
MANUALLY SOLD SMART PLAN		7	2356	7.99
741061651899	N	7	8400	4.99
Smart Plan Opportunities			5	27.95
Smart Plans Sold			4	22.96
Conversion Rate Percent			80.0%	
OPERATOR #1 102				
ITEM PURCHASED	PLAN SOLD?	LOCATION#	TRANS#	SMART PLAN SALE
3126200161	N	4	7019	4.99
1112030051	N	4	7024	4.99
622045107032	Y	4	7045	4.99
7779204005	N	4	7217	4.99
2891904639	N	4	6888	4.99
2628292354	Y	4	7031	7.99
2628292354	N	4	7207	7.99
Smart Plans Opportunities			7	43.93
Smart Plans Sold			2	12.98
Conversion Rate Percent			28.5%	
KMSKODL.???		END OF DAY		PAGE
KMSKMLL.???		SMART PLAN SALES REPORT		STORE
4/27/2000 (8:00 PM)		FOR 4/26/2000		TRAY
OPERATOR #1 5000				# 1005
				MI
SMART PLAN REFUNDED		LOCATION#	TRANS#	SMART PLAN REFUNDED
400944910199		3	4777	4.99
400944910199		3	4999	4.99
ITEM PURCHASED	PLAN SOLD?	LOCATION#	TRANS#	SMART PLAN SALE
400944910199	N	3	4206	4.99
2991404639	N	3	4317	7.99
MANUALLY SOLD SMART PLAN		3	4416	2.99
443138012899	Y	3	5200	4.99
400944910199	N	3	5327	4.99
400944910199	N	3	5327	4.99
VOIDED SMART PLAN		3	4206	4.99
SMART PLAN OPPORTUNITIES			5	25.95
SMART PLANS SOLD			2	7.98
SMART PLANS REFUNDED			2	9.98
CONVERSION RATE PERCENT			40.0%	
STORE TOTALS				
Total Smart Plan Opportunities			17	97.83
Total Smart Plans Sold			6	43.92
Conversion Rate Percent			49.5%	
Total Smart Plans Refunded			2	9.98
Net Total Smart Plans Sold			4	33.94
Net Conversion Rate Percent			35.3%	
DESTROY ON: 04/27/2002				
REPORT COMPLETE				

Continued on next page

TOPIC	TAB	PAGE	DATE	DISCARD DATE
Smart Plan Extended Warranty	SER	9 of 12	06/26/01	INDEFINITE

STORE OPERATING POLICIES

## Smart Plan Extended Warranty, Continued

### How to read the Smart Plan End of Day Report

Follow the chart below to read the *Smart Plan End of Day Report*.

Heading	Description
Operator #	Identifies the associate who rang the sale.
Item Purchased	This is the SKU number of the merchandise that had a <i>Smart Plan</i> available on it.
Plan Sold	Y for yes if a <i>Smart Plan</i> was sold and N for no if it was not.
Location #	This is the register location where the sale was rung.
Trans#	The transaction number of the sale.
Smart Plan Sale	The price the customer paid for the <i>Smart Plan</i> .
Smart Plan Opportunities	Total number of opportunities the operator had to sell a <i>Smart Plan</i> .
Smart Plans Sold	Total number of <i>Smart Plans</i> the operator sold.
Smart Plans Refunded	Shows on first operator only as this is the Service Desk. Tells how many plans were refunded.
Conversion Rate %	This is calculated by dividing the number of plans sold by the number of opportunities.
Store Totals	This section recaps the total store's <i>Smart Plan</i> numbers by adding the operators' numbers together.

### How to use the Smart Plan End of Day Report

Follow the points below to use the *Smart Plan End of Day Report*.

- This report prints automatically each morning.
- Each morning the Operations Manager is to review this report, and share the results with the Assistant, Upfront, and Department Managers. Use this information at the morning meeting to announce the store and associate results.
- Record the stores total figures on the *End of Day Smart Plan Log*.
- During the day the Assistant, Upfront, and Department Managers are to review each operator's numbers with the associate if they are working that day. Give praise or encouragement to each person you speak to. Keeping awareness levels high drives results. Remind associates of how much additional compensation they can earn in commission.
- Talk to associates that have low conversion rate %. Ask them how you can help. Have them watch the training video or try to team them up with another associate that is doing well so that they can share best practices.
- Post the daily report by the time clock, where all associates can see it. On the following day file the report in the *Daily Smart Plan Binder*. Keep this report for one year.

*Continued on next page*

TOPIC	TAB	PAGE	DATE	DISCARD DATE
Smart Plan Extended Warranty	SER	10 of 12	06/26/01	INDEFINITE

STORE OPERATING POLICIES



# Smart Plan Extended Warranty, Continued

## Smart Plan Conversion Rate % Report

SMART PLAN CONVERSION RATE % - ASSOCIATE DETAIL BY STORE - WEEK 11, 2001  
(IN UNITS)

DIVISION  
RPT  
STORE #

CLC	OFF	ACT	ACT	ACT	NET	NET
R	T	VOIDS	2	2	WEEK	WEEK
1	1	1	1	1	1	1
9078	1	0	0	0	1	100.00
78	45	3	0	0	27	60.00
277	6	0	0	0	3	50.00
281	19	1	0	0	5	48.00
117	7	1	0	0	3	42.00
34	6	1	0	0	2	40.00
147	35	0	0	0	14	40.00
201	23	0	0	0	8	34.78
262	23	2	0	0	8	34.78
326	3	0	0	0	1	33.33
28	9	0	0	0	3	33.33
1	18	0	0	0	6	33.33
16	21	1	0	0	7	33.33
317	33	2	0	0	4	30.77
169	21	0	0	0	5	29.57
18	25	0	0	0	7	28.00
131	28	0	0	0	6	27.69
190	11	0	0	0	3	27.27
9064	11	0	0	0	3	27.27
33	15	0	0	0	4	26.67
250	27	1	0	0	7	26.63
380	4	0	0	0	1	26.00
183	8	0	0	0	2	25.00
1002	8	1	0	0	2	25.00
906	20	1	0	0	6	25.00
84	33	1	0	0	4	24.54
106	22	0	0	0	5	22.73
210	14	3	0	0	3	21.43
243	19	1	0	0	4	21.05
98	5	0	0	0	1	20.00
135	15	0	0	0	3	20.00
45	21	0	0	0	4	19.05
136	16	0	0	0	3	18.75
172	11	0	0	0	2	18.18
30	17	0	0	0	3	17.65
13	8	1	0	0	1	16.67
46	6	1	0	0	1	16.67
96	13	0	0	0	2	15.38
9064	118	0	0	0	16	13.89
38	20	1	0	0	3	13.00
31	7	0	0	0	1	14.29
1015	7	0	0	0	1	14.29
120	30	1	0	0	3	10.00
292	11	0	0	0	1	9.09
104	13	1	0	0	1	7.69
347	20	0	0	0	1	5.00
9055	27	0	0	0	1	3.70
318	37	0	0	0	1	2.70
9057	79	1	0	0	2	2.53
146	1	0	0	0	0	0.00
9066	1	0	0	0	0	0.00
100	2	0	0	0	0	0.00
112	2	0	0	0	0	0.00
9031	2	0	0	0	0	0.00
139	3	0	0	0	0	0.00
9050	3	0	0	0	0	0.00
1014	6	1	0	0	0	0.00
9009	6	0	0	0	0	0.00
38	7	0	0	0	0	0.00
157	8	0	0	0	0	0.00
9049	16	0	0	0	0	0.00
235	21	0	0	0	0	0.00
9000	11	0	2	0	-2	-18.18
9001	44	1	15	0	-10	-22.73
TOTA	1,101	27	202	202	202	202

**Manager's Plan**

**Manager's Plan**

These Associates have low to mid SMART PLAN and are working on converting the Smart Plan goal of a 20% conversion rate.

These Associates are high percent achievers. They have their work into specific Associates. Continuing to achieve their Associates by providing positive recognition.

SMART PLAN Goal is to reach or exceed a 20% conversion rate.

These Associates have low to mid SMART PLAN and are working on converting the Smart Plan goal of a 20% conversion rate.

Upgrade the Associates by providing positive recognition and training. Continue to achieve their Associates by providing positive recognition.

My current opportunity is low.

These Associates are not achieving the Smart Plan to every customer every day. They are not. Offering help through training and coaching will help them understand and achieve their Associates by providing positive recognition.

I am below the Smart Plan goal of 20%. How do I get there?

Associate who is performing. She is not. Not with. Focus on training and giving recognition to reach or exceed the 20% goal. Challenge program members drive the results.

Continued on next page

TOPIC	TAB	PAGE	DATE	DISCARD DATE
Smart Plan Extended Warranty	SER	11 of 12	08/26/01	INDEFINITE

STORE OPERATING POLICIES

KMART 00756

## Smart Plan Extended Warranty, Continued

- Ways to Offer the Replacement Plan** Use the examples below to offer the *Replacement Plan* to your customers.
- Did anyone tell you about our **1-Year Replacement Plan**. It's only \$\_\_\_\_\_ which means if your product fails to work for any reason other than abuse or accidental damage we will reimburse you for the full purchase price plus tax!
  - Your product qualifies/is eligible for our **1-Year Replacement Plan** which means if your product fails to work for any reason other than abuse or accidental damage we will reimburse you for the full purchase price plus tax!
  - I personally recommend our **1-Year Replacement Plan**. If your product fails to work for any reason other than abuse or accidental damage we will reimburse you for the full purchase price plus tax!
  - You'll want to take advantage of a great program that we offer on your product, it's our **1-Year Replacement Plan**. If your product fails to work for any reason other than abuse or accidental damage we will reimburse you for the full purchase price plus tax!
  - Want to know the best way to protect your product? Our **1-Year Replacement Plan** will reimburse you for the full purchase price plus tax if your product fails for any reason other than abuse or damage!

Practice a phrase that works for you!

- Ways to Offer the Service Plan** Use the examples below to offer the *Service Plan* to your customers.
- May I suggest our **Service Plan**. It offers surge protection and pays for all parts and labor.
  - Your product qualifies for our **Service Plan** which means if we can't repair it after (3) attempts, we will replace it!
  - You'll want to take advantage of a great program we offer on your product, it's our **Service Plan**. If your product fails due to normal wear and tear or power surges we will pay for all repairs and if we can't fix it after 3 times, we will replace it!
  - I **PERSONALLY RECOMMEND** our **1-Year Service Plan**.
  - For added convenience we offer free in-home service on TV's 20' or larger if anything were to go wrong.

Practice a phrase that works for you!

**Questions** For any procedure questions, please contact your District Manager.

TOPIC	TAB	PAGE	DATE	DISCARD DATE
Smart Plan Extended Warranty	SER	12 of 12	06/26/01	INDEFINITE

STORE OPERATING POLICIES



**Smart Plan Test**

(Note: Make additional copies at store level)

To: Kmart Associate

After reviewing the *Smart Plan Video* and the *Computer Based Training* course, take the following test and return it to the Human Resource Manager. Please sign and date this document at the bottom of the page when you have completed the test.

1. The commission amount that you are paid on every *Smart Plan* that you sell is:
  - a. \$.25 for replacement / \$.50 for service.
  - b. \$.50 for replacement / \$.75 for service.
  - c. \$.25 and \$.50 for replacement / \$1.00 for service.
  - d. Kmart does not pay a commission.
2. To be paid your commission you must:
  - a. Submit an IRS 1099 form.
  - b. Do nothing, it automatically comes in my check.
  - c. Fill out and validate the commission record and turn it into HR.
  - d. Get approval from the Store Manager.
3. The Smart Plan does NOT cover:
  - a. Accidental damage and/or abuse.
  - b. Normal wear and tear.
  - c. Power surges.
  - d. Annual VCR cleaning.
4. The 1.800.99Kmart number for *Smart Plan* customers is open:
  - a. Monday – Friday 8:00 a.m. – 5:00 p.m.
  - b. Monday – Saturday 7:00 a.m. – 7:00 p.m.
  - c. Everyday from 7:00 a.m. – 7:00 p.m.
  - d. 24 hours a day / 7 days a week / 365 days a year.
5. Who should you offer the *Smart Plan* to?
  - a. Only people you think who will buy it.
  - b. Only people buying expensive items.
  - c. Every customer every time.
  - d. Only people who pay with cash.
6. The number ONE reason Kmart sells the *Smart Plan*?
  - a. Because customers want it. It gives them peace of mind.
  - b. To make money.
  - c. Competitors offer it.
  - d. The prices are so low.
7. Which of the following is FALSE?
  - a. The *Replacement Plan* provides 1-year of coverage.
  - b. The *Service Plan* starts after the manufacture's warranty expires.
  - c. The *Replacement Plan* is for products under \$100.00.
  - d. The *Replacement Plan* will repair the customer's product.

8. Which of the following is FALSE?
- The customer pays for shipping the replacement item.
  - The *Smart Plan* customer calls 1.800.99Kmart when they have a problem with their product.
  - The *Replacement Plan* will reimburse the customer for the price of the product only.
  - The *Service Plan* is for products over \$100.00
9. When offering the *Smart Plan*, which should you NOT do?
- Smile.
  - Give the customer a benefit.
  - Prejudge the customer.
  - Be positive about the plan.
10. Which of the following is NOT true?
- The *Watch* plan covers everything except the battery and abuse.
  - The *Replacement Plan* and *Service Plan* are both 1-year in length.
  - The *Replacement Plan* starts on the date of purchase, the *Service Plan* starts after the manufacture's warranty ends.
  - The *Smart Plan* covers everything.
11. What does the typical manufacture's warranty cover?
- Abuse.
  - Acts of God.
  - Defects in parts and workmanship.
  - All of the above.
12. What does the *Smart Plan* cover on watches?
- Case & crown.
  - Band & bezel.
  - Stem & cracked crystal.
  - All of the above.
13. What does the watch manufacture cover under the 1r warranty?
- Inner movement only.
  - Broken crystal.
  - Defects in the band.
  - All of the above.
14. *Smart Plan* provides in-home service on which of the following?
- VCR's
  - Bicycles
  - Playstation
  - TV's 20" and above and stationary exercise equipment.
15. When offering the *Smart Plan*, which of the following should you always practice?
- Never take a 'no' response personally.
  - Thank the customer for shopping at Kmart.
  - Offer the plan with a smile and a benefit.
  - All of the above.

Associate Name \_\_\_\_\_ Date: \_\_\_\_\_

### **Answers to Smart Plan Test**

1. The commission amount that you are paid on every *Smart Plan* that you sell is:
  - ( c ) \$.25 and \$.50 for replacement / \$1.00 for service.
2. To be paid your commission you must:
  - ( c ) Fill out and validate the commission record and turn it into HR.
3. The Smart Plan does NOT cover:
  - ( a ) Accidental damage and /or abuse.
4. The 1.800.99Kmart number for *Smart Plan* customers is open:
  - ( d ) 24 hours a day / 7 days a week / 365 days a year.
5. Who should you offer the *Smart Plan* to?
  - ( c ) Every customer every time.
6. The number ONE reason Kmart sells the *Smart Plan*?
  - ( a ) Because customers want it. It gives them peace of mind.
7. Which of the following is false?
  - ( d ) The *Replacement Plan* will repair the customer's product.
8. Which of the following is FALSE?
  - ( c ) The *Replacement Plan* will reimburse the customer for the price of the product only.
9. When offering the *Smart Plan*, which should you NOT do?
  - ( c ) Prejudge the customer.
10. Which of the following is not true?
  - ( d ) The *Smart Plan* covers everything.
11. What does the typical manufacture's warranty cover?
  - ( c ) Defects in parts and workmanship.
12. What does the *Smart Plan* cover on watches?
  - ( d ) All of the above.
13. What does the watch manufacture cover under their warranty?
  - ( a ) Inner movement only.
14. *Smart Plan* provides in-home service on which of the following?
  - ( d ) TV's 20' and above and stationary exercise equipment.
15. When offering the *Smart Plan*, which of the following should you always practice?
  - ( d ) All of the above.

**TAB 7**

ON SUNDAY 11/30/03, LAYAWAY TEAM MEMBER GLORIA POTER informed me of a suspicious female customer's (i.e., TASHA Holmes) attempt to pay off her layaway contract with a Kmart cash card. LAYAWAY TEAM MEMBER POTER then told the customer layaway registers do not accept Kmart cash cards to which the customer responded by asking for a refund on her contract thus incurring a layaway cancellation fee. LAYAWAY TEAM MEMBER POTER deemed the customer's request suspicious thereby informing me. I then began video surveillance of said customer and an accompanying male throughout the store. I noticed the two of them were making a lot of indiscriminate selections of high ticket value and purchased said selections at different registers (i.e., register #11, service desk register #32, and home electronics department register #34). I further noted their method of payment via Kmart cash cards. With the aid of a POS computer terminal, I ascertained the Kmart cash card numbers. I brought said Kmart cash card numbers to the attention of Front End Manager MICHAEL HEDLUND and he called the 1-800 phone number to obtain Kmart cash card histories on said Kmart cash card numbers. FRONT END MANAGER HEDLUND then provided such histories to me and I contacted

KMART00090

the applicable store (i.e., NASHUA, NH). I spoke to the NASHUA, NH store's Front End Manager who was able to track the Kmart cash card purchases to a Discover credit card. I then called the Discover card's hotline number and a representative told me the Discover credit card was reported stolen on 11/29/03 (Note: The NASHUA, NH store sold the Kmart cash cards on 11/29/03). I was able to obtain a license plate number from the vehicle used by said suspicious customers and later passed said information (and all of this statements information) to the NASHUA, NH police. I then informed STORE MANAGER DANIEL FERRIE of all of the above information, suggested the elimination of remaining balances on the Kmart cash cards in question to which DAN FERRIE responded by suggesting the purchase of SMART PLANS to reduce said card balances and relayed such information to FRONT END MANAGER MICHAEL HEDWIND. (Note: I informed STORE MANAGER DANIEL FERRIE of the above information on 11/30/03 via telephone.)

Michael J. Hedwind

**TAB 8**

12/22/2003 09:51 7812311503

K MART 3333

PAGE 02



# Loss Control Statement Form

Case Number

Page

of

Statement of	Michael L. Hedlund		Address	49 Ingell St.	
City	Taunton	State	MA	Zip	02780
Where Taken	Kmart Braintree MA		Date and Time of Statement	12/14/03 2:00 PM	
	12/1/03 MA				

On Monday I was advised by Nick (LPM) of 2 stolen cash cards. Where we had remaining balances left on them, once it was confirmed that the card were bought with a stolen credit card. I asked Dan about "killing" the receipts that were bought with the stolen k-cash card. Dan said to refund them and buy as many 299 smart plan that I could with it, because of the store poor compliance. This wasn't what I had planned to do; (Planned to refund then resal so that original receipt would decline if tried to be refunded) but DAN being store manager and having been adamant about having smart plans above 10% I did what he told me. I even thought knew this was wrong because DAN had threatened job in the past when I haven't followed his instructions.

The week before this happen I was told by Seini (Image manager) that DAN told him to tell me if smart plan sales weren't above 10% I would be fired.

And the week before that I was told by DAN that I was to tell the cashier that if sales weren't up he would fire a cashier that was not performing as an example.

KMART00086



12/22/2003 09:51 7812311603

K MART 3333

PAGE 03

I got all receipts with the stolen ICCards used at store level off office computer. I took them to refund desk; keyed in Id number and refunded them to cash card. To save time and not to show inventory that was actually not being returned; I took total dollar amount hit tax shift and refunded it to Dept. NINE as keyed entry.

Then went of office looked on discounted list, found discounted, cheap watches that a smart plan would ask when UPC was scanned. Did not use anything but watch upc that was discounted so that it wouldn't affect non-discounted merchandise, and so the sales wouldn't all be marked.

Then each day I would check smart plan sales and that every ~~then~~<sup>PH</sup> number short by to make ten % of reg. sale to reg. I would go to a number of reg. and sell smart plans to get to number above 10%. I did make sell at, sew, etc, and refund desk.

As each smart plan I sold to the reg. some cashiers asked if they got commission on them. I told them that they wouldn't get commission on these, but these would make their % look better.

The above statement is the truth to the best of my knowledge. I have made the above statement of my own free will and accord without any promise of immunity or reward and without any force or duress.

12/19/03  
Date/Time

*Mike Mallard*  
Signature

KMART00087

Witness(s)

*Ken Reeves*  
Print or Type Name

*Ken Reeves*  
Signature

NICHOLAS J. MACOMBER  
Print or Type Name

*Nicholas J. Macomber*  
Signature

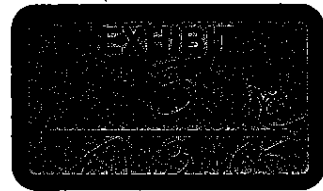
# **TAB 9**

12/22/2003 09:51

7812311603

K MART 3333

PAGE 01



**Loss Control Department  
Fax Transmission  
Cover Sheet**

Date: 12-21-03

To: David Hughes

Re: #3879 Investigation

From: Loss Control Team

Loss Control Team

K-Mart 3333  
180 Main St.  
Saugus, MA 01906

There are 16 pages with this fax (cover sheet included) if you do not receive all pages please call me at store #3333.

KMART00085

12/22/2003 09:51

7812311503

K MART 3333

PAGE 02



# Loss Control Statement Form

Case Number \_\_\_\_\_

Page \_\_\_\_\_

of \_\_\_\_\_

Statement of <u>Michael L. Herliand</u>		Address <u>49 Ingell St.</u>	
City <u>TAUNTON</u>	State <u>MA</u>	Zip <u>02780</u>	Phone <u>508-822-3211</u>
Where Taken <u>Kmart Braintree MA</u>		Date and Time of Statement <u>12/14/03 2pm</u>	
<u>12/11/03 MA</u>			
<p>On Monday I was advised by Nick (L.P.M.) of 2 stolen cash cards. Where we had remaining balances left on them, once it was confirmed that the card were bought with a stolen credit card. I asked Dan about "killing" the receipts that were bought with the stolen cash card. Dan said to refund them and buy as many 299 smart plan that I could with it, because of the store poor compliance. This wasn't what I had planned to do; (Planned to refund them resale so that original receipt would decline if tried to be refunded) but Dan being store manager and having been adamant about having smart plans above 10% I did what he told me. I even thought knew this was wrong because Dan had threatened job in the past when I haven't followed his instructions.</p> <p>The week before this happen I was told by Sam (Image manager) that Dan told him to tell me if smart plan sales weren't above 10% I would be fired. And the week before that I was told by Dan that I was to tell the cashier that if sales weren't up he would fire a cashier that was not performing as an example.</p>			
KMART00086			

(Continued on reverse)

12/22/2003 09:51

7812311603

K MART 3333

PAGE 03

I got all receipts with the stolen cards used at store level off office computer. I took them to refund desk; keyed in ID number and refunded them to cash card. To save time and not to show inventory that was actually not being returned; I took total dollar amount hit tax shift and refunded it to Dept. NINE as keyed entry.

Then went off office looked on discounted list, found discounted cheap watches that a smart plan would ask when UPC was scanned. Did not use anything but watch upc that was discounted so that it wouldn't affect non-discounted merchandise, and so the sales wouldn't all be marked.

Then each day I would check smart plan sales and that every ~~then~~<sup>PH</sup> number short by to make ten % of would sale to reg. I would go to a number of reg. and sell smart plans to get to number about 10%. I did make self at, key, etc, and refund desk.

As each smart plan I sold to the reg. some cashiers asked if they got commission on them. I told them that they wouldn't get commission on these, but these would make their % look better.

The above statement is the truth to the best of my knowledge. I have made the above statement of my own free will and accord without any promise of immunity or reward and without any force or duress.

12/19/03

Date/Time

Signature

KMART00087

Witness(s)

Jon Reeve

Print or Type Name

Signature

Nicholas J. Macomber

Print or Type Name

Signature

12/22/2003 09:51 7812311603

K MART 3333

PAGE 04

12/19/03

Mike informed me that in order to help increase smart plan sales he used a confiscated k cash card and bought smart plans toward watches.

Dan has made general commts about just ringing smart plan for the customers and if they do not want it then they then can return them. He has made commts about firing anyone who does not sale smart plans.



KMART00088

12/22/2003 09:51 7812311603

K MART 3333

PAGE 05

December 19, 2003.  
Braintree, MA.

To whom it may concern:

I, Rosa Pereira, was asked by the Store Manager to increase the amount of Smart Plans. sells. He joked about "punch them in" even if the customer didn't want them. I asked him if he was serious about it. He said, he was and never talked about anymore. He only asked how the sells are going.

Thank you,

Sincerely,  
Rosa Pereira  
Clock # 24  
Cashier.

KMART00089

12/22/2003 09:51

7812311603

K MART 3333

PAGE 06

ON SUNDAY 11/30/03, LAYAWAY TEAM MEMBER GLORIA POTER informed me of a suspicious female customer's (i.e., TASHA Holmes) attempt to pay off her layaway contract with a Kmart cash card. LAYAWAY TEAM MEMBER POTER then told the customer layaway registers do not accept Kmart cash cards to which the customer responded by asking for a refund on her contract thus incurring a layaway cancellation fee. LAYAWAY TEAM MEMBER POTER deemed the customer's request suspicious thereby informing me. I then began video surveillance of said customer and an accompanying male throughout the store. I noticed the two of them were making a lot of indiscriminate selections of high ticket value and purchased said selections at different registers (i.e., register #11, service desk register #32, and home electronics department register #34). I further noted their method of payment via Kmart cash cards. With the aid of a POS computer terminal, I ascertained the Kmart cash card numbers. I brought said Kmart cash card numbers to the attention of Front End Manager MICHAEL HEDLUND and he called the 1-800 phone number to obtain Kmart cash card histories on said Kmart cash card numbers. FRONT END MANAGER HEDLUND then provided such histories to me and I contacted

KMART00090



12/22/2003 09:51 7812311603

K MART 3333

PAGE 07

the applicable store (i.e., NASHUA, NH). I spoke to the NASHUA, NH store's Front End Manager who was able to track the Kmart cash card purchases to a Discover credit card. I then called the Discover card's hotline number and a representative told me the Discover credit card was reported stolen on 11/29/03 (Note: The NASHUA, NH store sold the Kmart cash cards on 11/29/03). I was able to obtain a license plate number from the vehicle used by said suspicious customers and later passed said information (and all of this statement's information) to the NASHUA, NH police. I then informed STORE MANAGER DANIEL FERRIE of all of the above information, suggested the elimination of remaining balances on the Kmart cash cards in question to which DAN FERRIE responded by suggesting the purchase of SMART PLANS to reduce said card balances and relayed such information to FRONT END MANAGER MICHAEL HEDWIG. (Note: I informed STORE MANAGER DANIEL FERRIE of the above information on 11/30/03 via telephone.)

Michael J. Hedwig

KMART00091

12/22/2003 09:51 7812311603

K MART 3333

PAGE 88

KMART00092

12/19/03

I Susan Jones had a conversation with Don Service in regard to Smart plans. I was told my job depended upon me selling Smart Plans. I was told to just ring them up. I told him I couldn't do that. He asked if I ever rang one up by mistake and what I did about it. I told him I took it out of the sale. He then said that I was assuming that the customer didn't want it. I said I had already asked the customer and they didn't want it. I didn't know what I was doing in regard to selling Smart plans. This conversation took place around 3 or 4 weeks ago in the L.P. Office. No one else was present at the time.

The pressure has really been on about the Smart plans. There was another incident about selling the plans after Thanksgiving where I was told that I dragged the whole store down by not selling the plans. It was all

12/22/2003 09:51 7812311603

K MART 3333

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my fault even though I didn't sing  
that day. Unfortunately it was my  
number in the register. The  
pressure was definitely on and  
everyone was finding it. Dan  
also told Julie to mark me down  
on my review because of this.

Susan Jones

KMART00093

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K MART 3333

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12-19-03  
I Lea South was told by Dan Ferrie  
to just ring in smart plans without  
customers request to purchase them. I told  
him I would not do that because it was  
wrong. The next day he told me I ~~was~~  
disappointed by not doing what he asked me  
to do. My Jax position was not threatened by  
him. But I know of him threatening other  
people with their positions.

Lea South

KMART00094

12/22/2003 09:51

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Smart Plan were told to be sold on a daily and hourly basis, would have to sell so many. Dennis told to add the smart plan to the people because he would not realize that it was on there receipt. The commission part of it would come up on the screen and we were told that we didn't have to validate and would get the commission. This didn't happen. Alan said because we didn't validate you couldn't get the information. My review said that I did not sell enough smart plan and this should not reflect my skill. We are not to be treated that way because I didn't sell there. I was very mad all the time and I felt that if I didn't sell enough I didn't know what was to happen next.

Mayerma  
12/19/03

KMART00095

12/22/2003 09:51

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12-19-03

DAN ASKED ME TO PUT A BIKE IN THE TRAINING ROOM FOR HIM ABOUT 3 1/2 MONTHS AGO. I PUT IT THERE AND HE SAID HE KNEW WHAT HE WAS GOING TO DO WITH IT. IT IS A PRE 2003 BIKE THAT RINGS IN AT .01%. IT IS STILL THERE.

ON ANOTHER OCCASION DAN PLACED 2 CARTS WITH VARIOUS MERCHANDISE IN THEM INTO MY GUN ROOM. THEY WERE THERE FOR A FEW WEEKS BEFORE HE REMOVED THEM. THIS WAS PRIOR TO 9/11/03.

ON 9/11/03 DAN AUTHORIZED THE 98% MARKDOWN ON SOME PRE 03 GUNS AND AMMO AND ALSO ON 6 GUNS NOT PRE 03 FOR THE PURPOSE OF SELLING THEM TO A FRIEND OF HIS. DAN WAS PRESENT FOR THE ENTIRE SALE SUPERVISING IT.

I, KENNETH R COY MAKE THESE STATEMENTS OF MY OWN FREE WILL TO SUPPORT AN LP INVESTIGATION. THESE STATEMENTS ARE TRUE AND FACTUAL.

Kenneth R Coy

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Report Retention: 3 Years From Date Of Issue



## Kmart Corporation Audit Services Department

**TO:** Mike Foltyn  
**FROM:** Donna I. Mastroeni  
Audit Services Department  
**DATE:** December 18, 2003  
**SUBJECT:** Kmart #3879 - Braintree, MA  
• Suspicious Smart Plan Warranty Sales and Kmart Cash Card Activity  
• Discounted Bulk Sales Irregularities

### Summary

At the request of the Treasurer's Department at KRC, I visited Kmart #3879 - Braintree, MA to review suspicious Kmart Cash card activity relating to the purchase of Smart Plan Warranties from December 1-12, 2003. Based on my preliminary findings, it appears Front End Manager Mike Hedlund used a Kmart Cash card to purchase 135 Smart Plan Warranties after Store Manager Dan Ferrie indicated warranty sales needed to increase to meet the store's conversion rate goal. Loss Prevention District Manager Jon Reeves indicated he would interview Mr. Hedlund on December 19, 2003 and notify Audit Services of his findings.

During my visit, two additional issues were brought to my attention by both District Manager John Swank and Loss Prevention District Manager Jon Reeves regarding softlines bulk sales and firearm sales.

- On November 5 and 7, 2003, clearance softlines merchandise was sold to a single buyer after the clearance POS price for the items purchased was reduced to \$1. District Manager John Swank indicated Store Manager Dan Ferrie had requested approval for the sale, however, he had authorized that the price be reduced only 25%. The original selling value of the \$699 sale was \$2,617.
- Twenty clearance firearms, five slingshots, six replacement bands, three rifled slugs and nine steel shots from pre 2003 clearance were reduced in price and allegedly sold to Store Manager Dan Ferrie's girlfriend's brother on September 11, 2003 for \$703. The original selling value for this merchandise was \$2,367.

Store Manager Dan Ferrie was not available for comment due to an injury he sustained at the store on December 17, 2003.

District Manager John Swank has been notified of my findings.

### Findings

#### Smart Plan Kmart Cash Activity

At the request of the Treasurer's Department at KRC, I reviewed Kmart Cash/Smart Plan activity for Kmart Cash Card #6006490300774118626. Using Electronic Journal detail, I discovered that it was used to purchase 106 watches with selling prices ranging from \$1.90 to \$10 and 135 Smart Plans for \$2.99 from December 1-12, 2003. The purchases

KMART00097



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Report Retention: 3 Years From Date Of Issue

were made in multiple transactions at a number of registers within a short time period. As the \$2.99 Smart Plan warranties purchased cover replacement cost only and the warranty itself cost more than the watch, it is unlikely that a customer would make such a purchase. The purchases occurred during the Smart Plan Double Commission Period, although double commissions would not be paid for these transactions as the warranties registered were less than \$7.99. Although the store did not reach its' conversion goal for week ending 11/26, the required conversion rate was met in weeks ending 12/3 and 12/10, the period in which these suspicious transactions occurred. Based on my preliminary findings, I contacted District Manager John Swank on December 12, 2003 and requested he meet me at the store on December 18, 2003 to review my findings.

Upon arriving at the store, I reviewed my findings with Loss Prevention Manager Nick Macomber who stated it is likely that Front End Manager Lead Front End Associate Mike Hedlund, Clock #27, moved from register to register, making these purchases. Mr. Hedlund was not available for comment during my visit.

Loss Prevention District Manager Jon Reeves initiated an investigation on December 19, 2003 and indicated he interviewed four associates who provided statements indicating Store Manager Dan Ferrie berated them by stating their lack of Smart Plan sales were pulling the store's conversion rate down and Mr. Ferrie wanted them to automatically add Smart Plan sales to eligible purchases without first asking the customer. Mr. Reeves indicated he would interview Mr. Hedlund when he arrived for work on December 19, 2003.

In researching how the Kmart Cash card used for these Smart Plan purchases had originally received value, it is my understanding that the store applied refunds to this cash card using the transaction number and amount of fraudulent purchases relating to a stolen credit card. It appears this was done by the store to trigger the refund system to block the fraudulently purchased merchandise from being refunded by using up the "open to refund" balance outstanding for the fraudulent purchase transaction. The effect of this was to create value on the cash card used to subsequently purchase the Smart Plans in question.

#### Softlines Clearance Bulk Purchase

On December 18, 2003, District Manager John Swank alluded to what he apparently believed to be the reason for my visit by indicating that he gave permission to Store Manager Dan Ferrie to discount a bulk purchase of softlines clearance merchandise by 25%; however, Mr. Swank stated that Mr. Ferrie exceeded what he had been authorized to do by reducing the clearance price to \$1.00 for each of 699 items purchased. I reviewed a sample of the items purchased on November 7, 2003 and found: 163 Boys White Polo (UPC #72122458772) with a current clearance KRC price of \$2.00 sold at \$1.00. Another example was 80 Jr Tee (UPC # 65061334642) with a current markdown price of \$4.00 sold at \$1.00. A review of *Item Maintenance Reports* dated November 5 and 7, 2003, revealed Clock #78 - Unit & Pricing Associate Linda Wood and Store Manager Dan Ferrie reduced the POS prices of these items. District Manager John Swank reiterated that he authorized Mr. Ferrie only to reduce the softlines clearance merchandise by 25% and 193 backpacks included in the purchase should not have been part of the bulk sale.

#### Firearms Clearance Bulk Purchase

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**Report Retention: 3 Years From Date Of Issue**

During my visit, Loss Prevention District Manager Jon Reeves indicated he had concerns with a bulk purchase of firearms that occurred on September 11, 2003. Mr. Reeves indicated the firearms (twenty firearms, six replacement bands, five slingshots, nine slingshot ammo, three rifled slugs and nine steel shots) were discounted and sold to the Store Manager's girlfriend's brother, Earl Brewer as validated by Loss Prevention Manager Nick Macomber. Based on the Electronic Journal detail, the POS price for these items was again lowered in the system prior to the purchase. Although I researched *Item Maintenance Reports* for September 2003, I was unable to locate the date the prices were reduced. District Manager John Swank stated he did not have concerns on this sale because the merchandise was Pre 2003 clearance and the merchandise was not transferable to a surrounding district because of their large in-stock position.

**Manager's  
Response**

Store Manager Dan Ferrie was unavailable for comment due to an injury he sustained at the store on December 17, 2003.

**Follow Up**

District Manager John Swank stated he would follow up to the above findings during all subsequent visits to #3879 and advise Regional Vice President MaryJo Duffy of all issues included in this memo. Loss Prevention District Manager Jon Reeves stated he will advise the Audit Services Department of the outcome of the questioning of Clock #27, Lead Front End Associate Mike Hedlund regarding the Smart Plan activity.

A follow up visit will be scheduled within six months to ensure corrective measures remain in place.

3879/dim/wgc

cc: MaryJo Duffy  
Janet Langford-Kelly  
Susan Rapp  
Jon Reeves  
Dave Schuvie  
Mike Stine  
Mark Thompson

KMART00099

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Date: 12/20/2003

To: Jon Swank DM, Donna Mastroeni, Internal Audit &  
Mike Foltyn, Director Internal Audit

Cc: Larry Scheld APRD, MaryJo Duffy RVP, David Hughes RHD

From: Jon A. Reeves, LPDM

RE: Investigation #3879 Braintree, MA

This proclamation is a synopsis of the investigation in store #3879 Braintree, MA conducted by this writer, Jon Swank and Donna Mastroeni. On 12/18/03 this writer met with Donna Mastroeni at the Kmart store #3879 Braintree, MA. Donna instructed this writer that she was investigating a suspicious transaction in regards to purchases of smart plans dated from 12/01/03 to 12/06/03. During this investigation evidence was found that Smart plans were purchased using an undisclosed K-cash card. The investigation, showed the following information;

Two fraudulent cash cards were purchased in store #3630 Nashua, NH on 11/29/03 by an unknown customer using a stolen credit card. *(The Nashua Police Dept. are investigating this case)*. These k-cash cards in question were used in store #3879 Braintree, MA to purchase miscellaneous merchandise by the unknown customer. LPM, Nick Macomber observed the transaction and immediately began to investigate the sale. Confirmation was received from the credit card company that the two k-cash cards were purchased with a stolen credit card. LPM Macomber then contacted store manager, Dan Ferrie to report what he had discovered concerning the above transaction. Dan was told by Macomber that there was \$600 remaining on the fraudulent cash cards. Nick and Dan both agreed to wipe out the remaining balance on the k-cards in question by purchasing merchandise by dept. using dept. #9. Nick under Dan's direction instructed front end manager, Mike Hedman to make appropriate purchases necessary to leave a Zero balance on the said k-cards.

On 12/19/03, this writer in conjunction with Donna Mastroeni began to interview several of the associates and identified clock numbers which made smart plan purchases using the K-cards. A total of 6 Kmart associates including Mike Hadman, Front end manager regarding the above issue. All associates provided a written statement regarding the fraudulent smart plan transactions. It was learned that Store Manager, Dan Ferrie instructed Mike Hedman to refund the \$600 from the original fraudulent k-cards to another k-card and use this k-card to purchase watches for \$1.90 and smart plans for \$2.99 due to the store having poor compliance. Mike admitted he knew this was wrong, but was afraid to challenge Dan due to Dan making threats of termination in two prior weeks (see attached statement A). After interviewing the remaining 5 witnesses it was also discovered that Dan instructed the cashiers to automatically ring in a smart plans for customer's transactions when prompted and not notify the customer unless they questioned the purchase. Several of the cashiers with the exception of one did as instructed by Dan. All cashiers were afraid to question Dan due to Dan making threats to them of being "fired" (see attached statements B, C, D, E, & F). The information was consistent with all associates interviewed.

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12/20/2003

*Investigation #3879 Braintree, MA*

At the conclusion of the investigation it was determined that Dan Ferrie instructed Front-end Manager, Mike Hedman to make fraudulent smart plan purchases using the third k-card to improve compliance. Dan also gave direction to his front-end cashiers to force ring smart plans without the knowledge of the customers to also improve compliance. The evidence was confirmed in all statements and detail tapes of keyed smart plans entries. Dan has made many threats of termination to any associate who doesn't follow his direction. The information obtained was disturbing and a clear violation of company policy, creating a hostile work environment as well as questionable integrity in regards to the corporate code of conduct.

Mike Hedman & Nick Macomber were both given guidance, concerning the improper way they dealt with the two fraudulent k-cards in the beginning. The original inappropriate action of wiping out the fraudulent Cash cards exposed the opportunity for the fraud to take place. All associates were instructed to review the appropriate front-end bulletins to eliminate any future incidents. They are to report to the LPDM in the future of all dubious issues concerning Smart plans and any potential fraudulent use of k-cards.

In addition to this investigation it was also learned that Dan has allowed sizable questionable purchases to be made by alleged friends without complete approval. These issues are still under investigation to determine the validity of the information. Jon Swank, Donna Mastroeni and I were unable to interview Dan due to Dan being out on a medical leave which started a day prior to the start of the investigation 12/17/03.

JR

Enc. 5

Attachments

KMART00101

12/20/2003

Confidential

# **TAB 10**

**Smart Plan Conversion Data**  
**Kmart #3879**  
**2003**  
**End of Fiscal Year 2003**

<b>WEEK</b>	<b>DATES</b>	<b>CONV RATE</b>
32	September 10 - 16	7.49
33	September 17 - 23	7.86
34	September 24 - 30	7.65
35	October 1 - 7	7.02
36	October 8 - 14	7.70
37	October 15 - 21	8.38
38	October 22 - 28	7.53
39	October 29 - November 4	5.19
40	November 5 - 11	6.64
41	November 12 - 18	7.32
42	November 19 - 25	9.85
43	November 26 - December 2	9.32
44	December 3 - 9	11.59
45	December 10 - 16	11.43
46	December 17 - 23	6.58
47	December 24 - 30	6.20
48	December 31 - January 6	4.72
49	January 7 - 13	4.83
50	January 14 - 20	4.73
51	January 21 - 28	4.84
52	January 29 - February 5	7.22

**TAB 11**

## First Report of Injury Worker's Compensation

Xmit ID - Notice ID WCM3879026559 Date received by Intake 12/18/2003 09:04

### Employer Information

Reporting Unit: 3879  
UNCLASSIFIED

Unemployment ID:-

Phone No:-

Client Address2:-

Client State:-

Location Address1:-

Location City:-

Loc Specific SIC Code:-

FEIN:-

Client Name:-

Client Address3:-

Client Zip:-

Location Address2:-

Location State:-

Employer ID:-

Policy Name:-

Client Address1:-

Client City:-

Location Name:-

Location Address3:-

Location Zip:-

### Insurance Information

Carrier name:-

Effective Date:-

Account No:-

Carrier Address3:-

Zip:-

Carrier Policy No:-

Expiration Date:-

Carrier Address1:-

City:-

Agent Code No:-

Admin Notify Date: 12/17/2003

Carrier Address2:-

State:-

DOB - 2/14/47

ET

### Employee Information

First name: Daniel

Home Phone No: (617) 899-1716

Name of Kin:-

Hired in Benefit State?: Y

State of Hire: MA

Work Status:-

Wages(\$): 000000000.00

Employee married?: -

Salary Continue?: -

Address2:-

State: MA

Mid Name:-

Work Phone No:-

Relation of Kin:-

Hire Date: - 7/16/98

Department: 3879 BRAINTREE, MA

Supervisor:-

Average Wage(\$/wk):  
000000000.00

No of Dependents:-

Race:-

Address3:-

County:-

Last Name: Ferrie

SSN: 024360166

Employee over 65?: N

Last Hired:-

Length of Service:-

Wage Period:-

Other Income(\$): 000000000.00

Dependents Under 18:-

Address1: 1600 Pine St

City: Dighton

Zip: 02715

\$88,900/annual salary

### Return to Work & Schedule

Work begins: 06:00

RTW Date:-

Expected RTW:-

Daily Working Hours: 10

Occupation: Has left for the day

Weekly Working Hours: 048

Return Wage(\$): 000000000.00

KMART00253

### Accident Information

Loss Description: He slipped on a plastic bag on a bottom step while walking down. Karen Masseo is a witness and her clock number is 130. He injured his left arm, hand, back, and a leg. Which leg is unknown.

Accident D/T: 12/17/2003 07:15

Employer Notified D/T:

Last Work Date: 12/17/2003

12/17/2003 07:20

**Injured Body Part:** Lower Arm,  
Hand, Lower Back Area (Incl.  
Lumbar &, Thigh, Lower Leg

**Body Code:** 33, 35, 42, 52, 54

**Cause of Injury:** -

**Injury Cause Code:-**

**Type of Injury:** All Other

**Injury Type Code:** 59

**Accident Address1:-**

**Accident Address2:-**

**Accident Address3:-**

**City:** -

**State:** -

**Zip:** -

**Home Phone No:-**

**Work Phone No:** -

**First Name:-**

**Mid Name:** -

**Last Name:** -

**Loss Prevention Manager :** -

**LPM Phone No:** -

**Date of Death If Apply:** -

**Benefit State:** MA

**Safety Equip Provided?:** -

**Safety Equip used?:** N

**Any Photo taken?:** -

### Treatment Information

**Hospital Name:** -

**Treatment Type:** -

**Physician Name:** UNK

**Physician First Name:** -

**Physician Mid Name:** -

**Physician Last Name:** -

**Home Phone No:** -

**Work Phone No:** -

**Physician Address1:** -

**Physician Address2:** -

**Physician Address3:** -

**Hospital Address1:** -

**Hospital Address2:** -

**Hospital Address3:** -

**City:** -

**State:** -

**Zip:** -

### TPA Branch Information

**Branch Name:** -

**Branch Phone:** -

**Branch Address1:** -

**Branch Address2:** -

**Branch Address3:** -

**City:** -

**State:** -

**Zip:** -

### Witnesses Information

**Witness First Name :-**

**Witness Last Name:** -

**Home Phone :-**

**Work Phone:** -

**Witness Address1 :-**

**Witness Address2 :-**

**Witness Address3 :-**

**City:** -

**State :-**

**Zip:** -

### Preparer Information

**Title:-**

**First name:-**

**Mid Name:** -

KMART00254

**Last Name:** -

**Home Phone No:** -

**Work Phone No:** -

### Other Field Information

**Accident type:** -

**Carrier self insured?:** -

**Employee department no:** 3879  
BRAINTREE, MA

**Employee has dependent?:** -

**Client number:** -

**Employee hired in benefit state?:**  
Y

**Is employee a owner/partner of  
the office?:** -

**CSC flag :** Y

**Employee owned? :** -

**Employee title :** Store Mgr

**Employee status code :** -

**First disability begin :** 12/17/2003

**First disability begin time :** 07:15

**Form entered  
date/time :** 12/17/2003 00:00

**Full/part time :** -

**Full wages paid? :** -

**id :** 1006596

**Insurance line :** WORKCOMP

**Internet user Y/N? :** -

**Job class code :** -

**Loaded to claim  
staging :** 12/18/2003 10:11:15



# **TAB 12**

02/09/2004 09:07 7818433994

KMART 3879

PAGE 01

Statement of Daniel A. Ferrie, Store Manager of K-Mart 3879;

On 3/1/04 the above was met at the Braintree store by Loss Control DM John Reeves & Operations DM Mike ( unsure of last name) who were there to investigate several issues involving my self, please note that today was my first restricted day back at work to a work related injury involving a slip and fall accident on 12/17/03. After some verbal conversation I was asked to make a written statement relative to these allegations. I did so giving a handwritten copy, however when this copy was faxed to the Regional office they were unable to read it and I was asked to type the said statement. Please note that one of the allegations was that I made certain statements to employees relative to smart plans when I asked who these employees were and when I was told by Mr Reeves that this information would not be made available to me by the investigators, note the investigators have written statements in hand.

#1) I NEVER made statement or gave instructions to anyone to sell smart plans on watches for \$1.99 ( I got this information from the investigators) with out the sale being legitimate. I never gave a one on one to any person or person relative to this matter.

#2) The sale of SMART PLANS from a Cash card that had been used in a relations to a stolen credit card. While at home one night (not certain of the date) I received a call from Nick MaComber my Loss Control Manager and a former Loss Control DM in the Boston Market, Mr MaComber advised me that he and Mike Headlund the stores up front manager had encountered a team of people (consisted of 1 man and 1 lady) that had used a K-Cash card at the Braintree store to make purchases in the Electronics dept, because of the surrounding event they became suspicious and had learned that the Card ( I am not sure of the amount) had been purchases at the Nashua NH K-Mart. Nick indicated that the normal process to stop the card via the company took to long and asked about killing the card ( they had given the original card back to the customers) who had since left the store. I agreed over the phone to switch the monies left on the card to a new card. We hung up. Some time the next day I called Mr Swank about the incident to advise him what a had happened he called John Reeves and an investigation was started with the Nashua NH Police Department. Some time in the next couple of days ( I am not sure of the dates and times) Nick MaComber again came to me and stated for some reason the NEW card should also be killed because he felt the violators could still get to the monies. I discussed giving the card back to Nashua, for some reason ( again I cant remomber) it was Mutually dedied to make purchases on the card to kill it and that again just transfer in the card would avail the people to still get to the cards money, We talked about how this was to be handleed and we eventually came to a disoission to buy smart plans with the card, 1) we would not affect any integrities and 2) it would be an easy fix as we knew the money would have to go back on a card or fixed in some other way. After Nashua Police completed there investigation ( warrants issued) I asked Nick to be sure he fixed the card with Mike Headlund 4 times I asked him and was told that the issue was resolved. I never saw the card or had a conversation with any one other than Nick relative to the card or use of. The reason that Nick had talked to Headlund was that he and Mike got along and that I had on several occasions delt with poor performance issues with Headlund and including poor smart plan results. I was a well know fact that I did not like Mike Headlund due to his constant poor performance in fact this was noted by Jon Swank former DM as he and I had numerous discussions about Mike. ( note one of the time I talked to MaComber about reconstructing the card was in the GENERAL office( again I can not remember dates and times). Note at this time I do not know where the card is I was told by Nick that it was in the cash office. Relative to telling people (associates to ring up smart plans when they prompted w/o asking the customer) I don't know with whom I was pose to have had these convesations with. I did have many conversations with cashiers and associates about smart plans and their poor performances on smart plan sales, but during those time I indacted that continued NON performance would lead to other corrective actions. Note that many personal interviews were issued. I do not remember having any conversation with an associate giving instructions to ring up sales with out asking the customer. I do remember other conversations about smart plans but not that.

#3 Answering to selling guns that did not appear on the pre-2003 list. The store had fire arms that were not selling at the mark down. I asked Jon Swank if he wanted me to get someone in to but the guns he stated yes, which I did through a friend of mine who collects guns. I arranged for a date and time for the guns to be sold, I remember it was Thursday and that I had Ken Coy the Sporting Goods Manager come in on his day off to do the paper work (Thursday was the only day the other person could come) I also arranged for Nick MaComber to come in t the store to supervise the sale of the guns. On the day of sale I introduced the

02/09/2004 09:07 7818433994

KMART 3879

PAGE 02

parties who all went to sporting goods. I did make Ken get an LRT and scan each gun to insure they were pre2003, I also asked MaComber to verify each gun. The sale took over 3 hours to complete (several guns were sold and all paper work had to be completed) during this time I stopped by several times to see how things were going on each time I asked if they were checking each gun they stated yes. *have since talked to Ken Coy who insists that each guns was checked and they were all 2003. I have no other knowledge about this sale.*

#4 Bulk sale of mark down clothing per the clearance schedule. Please note that the store had become the dumping ground for clearance MDs. As this sold down I indavoted to Jon Swank. That I could get someone to buy this merchandise to ship it overseas, Mr Swank gave me the OK. Prior to the sale We had received a very large transfer of back packs out of 9424, I had placed these bags at the front of the store and they did not sell even at the MD we were authorized. I had a conversation with Mr. Swank on these items as well as the clearance I was told to do what I had to do to get rid of them as they did not want carry over. I also sold these in the sale. I had several conversations with Mr. Swank relative to these items including some hard lines items that were 2003, Mr. Swank (day of sale) indicated that he had NOT seen these items and was not comfortable. I did not sell the. In fact due to the holiday sales they remained BOXED and listed by the 605 room. I showed these to Mr. Reeves on one of his visit. In fact the day of sale Mr Swank asked me to have the people go to 9424 to "help" Blanch (store Mgr) out with her clearance. I did in fact call 9424 that day with the information.

Please note (have advised Mr. Reeves and Mike) that on my walk around the store to day I was advised that I was going to be fired (3 separate associates), this would indicate to me that these chargegs have a predetermined result. Reeves incated that they did not, however find an involuntary seperation report out of folder indicated otherwise. (found report on desk when I came in to type report).

I have had numerous problems in this store and had MANY conversations with Joh Swank relative to alligations of qrong doing up to and including theft of a \$4.00 phone, note Reeves investigated and resulted VIA camera system to be a boggus report, and I indicated that being felt at this store would only result in a final demise for me as it had for every store manager who preseeded me here.

I hereby state that I belive the facts that I have given in this investigation. If I have done ANY wrong it was to intentional or for any personal gain (what did I gain with the smart lans). I further offer to submit to a polygraph test based on my report and any others given in this investigation in an attempt to show I have told the truth relative to these issues.

Respectfully submitted,

Daniel A. Ferrie

KMART 00460

Page #1



# Loss Prevention

# Statement Form

Case Number \_\_\_\_\_

Page 1 of 4

Statement of <u>Donald A. Frame</u>		Address <u>K-Mart</u>	
City <u>Camden</u>	State <u>MD</u>	Zip <u></u>	Phone <u></u>
Where Taken <u>AT K-Mart</u>		Date and Time of Statement <u></u>	

on 3/1/04 I have been asked to make #1: statement to incident relative to accusation made by unknown people (unknown name) I have asked for the name of people making statement about me & the information could not be provided by the investigation.

#1: I never made any statement to anyone in the store relative to selling less water Smart plan cups being a legitimate sale.

#2: the sale of Smart plan was a catch and were offered to me due to the fact that the card was stolen. I did on a difficult occasion assist Nick McCauley who orchestrated the plan & sales to correct them & put them back on the card & they were a fix to making RTA police has made an investigation to complaint on this case. I can tell that the police has been clear case by Nick and Corby. Nick was in direct communication with Mike Hardcastle from First manager. Nick instructed Mike it was my responsibility that this issue had been resolved. I have been accused of making statements to people to sell smart plans by using the sale from cups asking the customers I do not.

(Continued on reverse)

Donald A. Frame  
 3/1/04

02/09/2004 06:33

7818433994

KMART 3879

PAGE 02

02/09/04

personed any such conversation w/ anyone related  
to this 7 days after allegation info known to  
when I made alleged statement to.

For the case of selling guns that  
did not appear on the 1993 list. I  
found a buyer to purchase guns too - a  
person known to me. In the act of sale I  
had him in control of the gun control manager &  
knowing by the state laws we had each  
gun before sale with a LPT to see if  
it qualified to be a good gun. I did not  
stay in gun store to check the sale - I  
did go down several times a week - not  
looking at any paper work each time I checked if  
they were checking each gun as they sold it  
back & was not tied up for over 3 hours.  
Only paperwork & at the end assured the sale  
was correct & correct procedures were followed.  
The sale of proper clothing was also  
by Tom Smith, Jr. received the sale of guns  
several times prior to the actual sale of  
merchandise - & did not. I told him I was  
going to do it - I was interested to do  
'what ever it takes' After the sale I called on

The above statement is the truth to the best of my knowledge. I have made the above statement of my  
own free will and accord without any promise of immunity or reward and without any force or duress.

Date / Time

Signature

Witness(s)

Print or Type Name

Print or Type Name

Signature

Signature

02/09/2004 06:33

7818433994

KMART 3879

PAGE 03

page 3

Scamp + he asked me to give some  
 guy a call & give Blanche the name of  
 the person so she too could get in on  
 her excess inventory.

Please note I have been informed by Tom  
 Nance has control over + Mike Haul (Spilly)  
 relative to this matter. I have expressed the  
 fact that this issue has been pre-determined due  
 to the fact several employees have approached me  
 + stating I was going to be terminated over these  
 alleged incidents.

Further note that the employees of this  
 store have heard on numerous occasions that  
 the store manager fired a person &  
 this information is known as I have talked to  
 John Nance & Jan Scott that I have seen  
 been accused of stealing a few items - however  
 closed circuit cameras moved by loss control  
 stand otherwise.

Further + Final I Drive by my all  
 allegation relative to conversations. I was

The above statement is the truth to the best of my knowledge. I have made the above statement of my  
 own free will and accord without any promise of immunity or reward and without any force or duress.

Date/Time

Signature

Witness(s)

Print or Type Name

Print or Type Name

Signature

Signature

Page #4

alleged to have had to take the  
 away from of anything. I only ask I  
 question what did I gain by doing  
 it, but in alleged of me during the  
 Holiday season. I want please even a priority  
 to sell however the store was closed already &  
 I can't make the cash savings like a job  
 off by making (4 hours) I did tell the  
 cashier to do a cash sale every 5 hours or  
 so. I want please to be heard to the  
 alleged incident.

The above statement is the truth to the best of my knowledge. I have made the above statement of my own free will and accord without any promise of immunity or reward and without any force or duress.

2/1/04  
Date / Time

Signature

Witness(s)

David Ferris  
Print or Type Name

Print or Type Name

Signature

Signature

**TAB 13**



**The Commonwealth of Massachusetts  
Commission Against Discrimination  
One Ashburton Place, Boston, MA 02108  
Phone: (617) 994-6000 Fax: (617) 994-6024**

MCAD DOCKET NUMBER: 04BEM01562  
FILING DATE: 06/15/04

EEOC/HUD CHARGE NUMBER: 16CA401817  
VIOLATION DATE: 03/01/04

Name of Aggrieved Person or Organization:

Daniel A. Ferrie  
1600 Pine Street  
Dighton, MA 02715  
Primary Phone: (508) 669-6349 ext. \_\_\_\_\_

Named is the employer, labor organization, employment agency, or state/local government agency who discriminated against me:

K-Mart Corp.  
Attn: Human Resources  
3100 W. Big Beaver Rd.  
Troy, MI 48084  
Primary Phone: (248) 463-1000 ext. \_\_\_\_\_

No. of Employees: 25+

Work Location: Braintree, MA

Cause of Discrimination based on:

Age, Age of Complainant, specified; Other, Paragraph 4, Retaliation.

The particulars are:

I, Daniel A. Ferrie, the Complainant believe that I was discriminated against by K-Mart Corp., on the basis of Age, Other. This is in violation of M.G.L. 151B Section 4 Paragraph 1B, 4 and ADEA.

See Attached

I hereby verify, under the pains and penalties of perjury, that I have read this complaint and the allegations contained herein are true to the best of my knowledge.

  
(Signature of Complainant)

6/15/04  
Date

**TAB 14**

Home > Administer Workforce > Administer Workforce (GBL) > Inquire > **Job Summary**

New Window

## Job Summary

JAMES,CARLTON

EmplID: 01003900060

SSN: 158725810

## Job Information

View 7 First

General		Job Information	Work Location	Compensation			
Eff Date	Sequence	Jobcode	Empl Type	Empl Status	Full/Part Time	Reg/Temp	Standard
02/01/2005	0	DVPStrConv	Salaried	Active	Full-Time	Regular	45.00
01/27/2005	0	DTM	Salaried	Active	Full-Time	Regular	48.00
10/12/2004	0	DTM	Salaried	Active	Full-Time	Regular	48.00
02/01/2004	0	DTM	Salaried	Active	Full-Time	Regular	48.00
01/29/2004	0	DTM	Salaried	Active	Full-Time	Regular	48.00
05/01/2003	0	DTM	Salaried	Active	Full-Time	Regular	48.00
01/30/2003	1	DTM	Salaried	Active	Full-Time	Regular	48.00
01/30/2003	0	DTM	Salaried	Active	Full-Time	Regular	45.00
06/16/2002	0	DTM	Salaried	Active	Full-Time	Regular	48.00
01/31/2002	0	DTM	Salaried	Active	Full-Time	Regular	48.00
12/10/2001	0	DTM	Salaried	Active	Full-Time	Regular	48.00
07/25/2001	0	DTM	Salaried	Active	Full-Time	Regular	48.00
07/15/2001	0	DTM	Salaried	Active	Full-Time	Regular	48.00

[Return to Search](#)

## Job Summary

Page 1 of 1

Home &gt; Administer Workforce &gt; Administer Workforce (GBL) &gt; Inquire &gt; Job Summary

New Window

## Job Summary

NICOLINI,DANIEL

EmplID: 01000066220

SSN: 114683657

## Job Information

View 7

First

1-32 of 32

General	Job Information	Work Location	Compensation
---------	-----------------	---------------	--------------

Eff Date	Sequence	Jobcode	Empl Type	Empl Status	Full/Part Time	Reg/Temp	Standard Hours	Work Pe
02/16/2005	0	Str MgrVI	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/27/2005	0	StrMgrIII	Salaried	Active	Full-Time	Regular	48.00	Weekly
06/07/2004	0	StrMgrIII	Salaried	Active	Full-Time	Regular	48.00	Weekly
05/27/2003	0	Str MgrVI	Salaried	Terminated	Full-Time	Regular	48.00	Weekly
01/30/2003	0	Str MgrVI	Salaried	Active	Full-Time	Regular	48.00	Weekly
09/01/2002	0	DTM	Salaried	Active	Full-Time	Regular	48.00	Weekly
08/09/2002	0	DTM	Salaried	Active	Full-Time	Regular	48.00	Weekly
06/16/2002	0	DTM	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/31/2002	0	DTM	Salaried	Active	Full-Time	Regular	48.00	Weekly
07/26/2001	0	DTM	Salaried	Active	Full-Time	Regular	48.00	Weekly
07/05/2001	0	StrTMgrIII	Salaried	Active	Full-Time	Regular	48.00	Weekly
07/01/2001	0	Str TMgr I	Salaried	Active	Full-Time	Regular	48.00	Weekly
05/03/2001	0	Str TMgr I	Salaried	Active	Full-Time	Regular	48.00	Weekly
05/01/2001	0	Str TMgr I	Salaried	Active	Full-Time	Regular	48.00	Weekly
02/01/2001	0	Str TMgr I	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/18/2001	0	Str TMgr I	Salaried	Active	Full-Time	Regular	48.00	Weekly
11/02/2000	0	Oper Mgr G	Salaried	Active	Full-Time	Regular	48.00	Weekly
07/27/2000	0	Rep TM D	Salaried	Active	Full-Time	Regular	48.00	Weekly
06/01/2000	0	Rep TM D	Salaried	Active	Full-Time	Regular	48.00	Weekly
04/20/2000	0	Repl TM	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/27/2000	0	Repl TM	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/06/2000	0	Repl TM	Salaried	Active	Full-Time	Regular	48.00	Weekly
12/01/1999	0	Repl TM	Salaried	Active	Full-Time	Regular	48.00	Weekly
04/22/1999	0	Repl TM	Salaried	Active	Full-Time	Regular	48.00	Weekly
11/12/1998	0	Repl TM	Salaried	Active	Full-Time	Regular	48.00	Weekly
06/19/1998	0	HL TAM MTP	Salaried	Active	Full-Time	Regular	48.00	Weekly
06/18/1998	0	HL TMgr	Salaried	Active	Full-Time	Regular	48.00	Weekly
05/07/1998	0	HL TAM MTP	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/29/1998	0	HL AM MTP	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/15/1998	0	HL AM MTP	Salaried	Active	Full-Time	Regular	48.00	Weekly
12/11/1997	0	Pacesetter	Salaried	Active	Full-Time	Regular	48.00	Weekly
10/30/1997	0	Pacesetter	Salaried	Active	Full-Time	Regular	48.00	Weekly

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## Job Summary

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Home &gt; Administer Workforce &gt; Administer Workforce (GBL) &gt; Inquire &gt; Job Summary

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## Job Summary

BENNETT,DAVID G

EmplID: 61000007156

SSN: 089661296

## Job Information

View 7

First

1-48 of 48

General		Job Information	Work Location	Compensation				
Eff Date	Sequence	Jobcode	Empl Type	Empl Status	Full/Part Time	Reg/Temp	Standard Hours	Work Per
06/15/2005	0	ProTem Coa	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/27/2005	0	DTM	Salaried	Active	Full-Time	Regular	45.00	Weekly
01/29/2004	0	DTM	Salaried	Active	Full-Time	Regular	45.00	Weekly
01/30/2003	1	DTM	Salaried	Active	Full-Time	Regular	45.00	Weekly
01/30/2003	0	DTM	Salaried	Active	Full-Time	Regular	45.00	Weekly
06/16/2002	0	DTM	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/31/2002	0	DTM	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/16/2002	0	DTM	Salaried	Active	Full-Time	Regular	48.00	Weekly
12/17/2001	0	DTM	Salaried	Active	Full-Time	Regular	48.00	Weekly
07/12/2001	0	Str TMgrVI	Salaried	Terminated	Full-Time	Regular	48.00	Weekly
07/01/2001	0	Str TMgrVI	Salaried	Active	Full-Time	Regular	48.00	Weekly
05/03/2001	0	Str TMgrVI	Salaried	Active	Full-Time	Regular	48.00	Weekly
05/01/2001	0	Str TMgrVI	Salaried	Active	Full-Time	Regular	48.00	Weekly
02/01/2001	0	Str TMgrVI	Salaried	Active	Full-Time	Regular	48.00	Weekly
07/27/2000	0	Str TMgrVI	Salaried	Active	Full-Time	Regular	48.00	Weekly
05/01/2000	0	Str TMgrVI	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/27/2000	0	Str TMgrVI	Salaried	Active	Full-Time	Regular	48.00	Weekly
12/01/1999	0	Str TMgrVI	Salaried	Active	Full-Time	Regular	48.00	Weekly
06/07/1999	0	Str TMgrVI	Salaried	Active	Full-Time	Regular	48.00	Weekly
05/01/1999	0	Str TMgrIV	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/28/1999	0	Str TMgrIV	Salaried	Active	Full-Time	Regular	48.00	Weekly
08/10/1998	0	StrTMgrIII	Salaried	Active	Full-Time	Regular	48.00	Weekly
05/07/1998	0	Str TMgr I	Salaried	Active	Full-Time	Regular	48.00	Weekly
02/01/1998	0	Str Mgr I	Salaried	Active	Full-Time	Regular	48.00	Weekly
03/13/1997	0	Str Mgr II	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/30/1997	0	Ops Mgr	Salaried	Active	Full-Time	Regular	48.00	Weekly
04/18/1996	0	Ops Mgr	Salaried	Active	Full-Time	Regular	48.00	Weekly
02/01/1996	0	HL Manager	Salaried	Active	Full-Time	Regular	48.00	Weekly
06/29/1995	0	HL Manager	Salaried	Active	Full-Time	Regular	48.00	Weekly
02/09/1995	0	HL Mgr LII	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/26/1995	0	SK HL LII	Salaried	Active	Full-Time	Regular	48.00	Weekly
07/14/1994	0	MAM-MTP	Salaried	Active	Full-Time	Regular	48.00	Weekly
05/12/1994	0	OM-MTP	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/27/1994	0	MAM-MTP	Salaried	Active	Full-Time	Regular	40.00	Weekly
04/15/1993	0	MAM-MTP	Salaried	Active	Full-Time	Regular	40.00	Weekly
01/28/1993	0	MAM-MTP	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/23/1992	0	MAM-MTP	Salaried	Active	Full-Time	Regular	48.00	Weekly
06/17/1991	0	MAM-MTP	Salaried	Active	Full-Time	Regular	48.00	Weekly
04/18/1991	0	MAM-MTP	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/24/1991	0	MAM-MTP	Salaried	Active	Full-Time	Regular	48.00	Weekly
03/07/1990	0	Store Hrly	Hourly	Active	Full-Time	Regular	40.00	Weekly
08/09/1989	0	Store Hrly	Hourly	Active	Full-Time	Regular	40.00	Weekly
03/08/1989	0	Store Hrly	Hourly	Active	Full-Time	Regular	40.00	Weekly
07/16/1988	0	Store Hrly	Hourly	Active	Full-Time	Regular	40.00	Weekly

## Job Summary

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07/13/1988	0	Store Hrly	Hourly	Active	Full-Time	Regular	40.00	Weekly
06/01/1988	0	Store Hrly	Hourly	Active	Full-Time	Regular	40.00	Weekly
03/27/1988	0	Store Hrly	Hourly	Active	Full-Time	Regular	40.00	Weekly
03/23/1988	0	Sys Start		Active	Full-Time	Regular	40.00	Weekly

[Q Return to Search](#) [+ Next in List](#) [↑ Previous in List](#)

**TAB 15**

COPY

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3 -----x  
4 DANIEL A. FERRIE,

5 Plaintiff,

6 vs.

7 K MART CORPORATION,

8 Defendant.  
9 -----x

10  
11 DEPOSITION OF JON SWANK

12 New York, New York

13 Friday, June 24, 2005  
14  
15  
16  
17  
18  
19  
20  
21  
22

23 ELLEN GRAUER COURT REPORTING, CO., LLC  
24 133 East 58th Street, Suite 1201  
25 New York, New York 10022  
212-750-6434  
REF: 77920



SWANK

1  
2 A. She was a store manager for me  
3 at Brighton, Mass.

4 Q. What was her age, sir?

5 A. Once, again, the previous  
6 question you asked me to guess at that. If I  
7 were to guess, I would have to put her over  
8 50.

9 Q. And the name of the other  
10 individual, sir?

11 A. Leslie Clark.

12 Q. What was her age?

13 A. I would have to guess her age to  
14 be in her mid-40s, possibly late 40s.

15 Q. At any time, sir, in your  
16 communications with Mr. Ferrie, did you ever  
17 mention anything to do with his age?

18 A. Not that I can specifically  
19 recall.

20 Q. Did you ever refer to Mr. Ferrie  
21 as old?

22 A. Not that I can specifically  
23 recall.

24 Q. Even in a joking manner?

25 A. I recall that Mr. Ferrie would

SWANK

frequently joke about himself. He would frequently refer to himself as old. I cannot recall specifics. I know he used to refer to himself as the Dunkin Donuts man that he looked like the Dunkin Donuts man.

Q. Did you ever refer to Mr. Ferrie as old and fat --

A. Not that I can specifically recall.

Q. -- either to Mr. Ferrie or to anyone else in reference to Mr. Ferrie?

A. Not that I can specifically recall.

Q. Generally, do you have any recollection concerning your statements about Mr. Ferrie's age?

MR. ROSIN: Objection.

You can answer that if you can.

A. Repeat the question.

Q. Do you have any general recollections of you referring to Mr. Ferrie's age, either to Mr. Ferrie or to anyone else?

A. The only general recollection I have of Mr. Ferrie is him referring to himself

1 SWANK

2 jokingly in that context. My response, I  
3 might have responded to his jokes.

4 Q. Do you have any recollection of  
5 referring to any other K Mart store manager as  
6 old?

7 A. No, I do not recall.

8 Q. To the best of your  
9 understanding why was Mr. Ferrie terminated  
10 with his employment with K Mart?

11 A. I was not the district manager  
12 of the Boston market when he was terminated.

13 Q. Regardless of your position at  
14 the time of Mr. Ferrie's termination, what was  
15 your understanding as to the reasons for Mr.  
16 Ferrie's termination?

17 A. Once again, I was not privy to  
18 the specific reasons for his termination. I  
19 cannot speak to that.

20 Q. At some point did you become  
21 aware that Mr. Ferrie was no longer employed  
22 with K Mart?

23 A. Yes.

24 Q. When did you become aware that  
25 Mr. Ferrie was no longer employed with K Mart?